

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
October 30, 2008
Lansing, Michigan

Meeting noticed in accordance with Open Meetings Act, Public Act 267 of 1976.

Present: Ted B. Wahby, Chair
 Linda Miller Atkinson, Vice Chair
 Steven K. Girard, Commissioner
 Jerrold M. Jung, Commissioner
 James S. Scalici, Commissioner

Also Present: Kirk T. Steudle, Director
 Frank E. Kelley, Commission Advisor
 Jerry Jones, Commission Auditor, Office of Commission Audit
 Patrick Isom, Attorney General's Office, Transportation Division
 John Friend, Bureau Director, Highway Delivery
 John Polasek, Bureau Director, Highway Development
 Myron Frierson, Bureau Director, Finance and Administration
 Susan Mortel, Bureau Director, Transportation Planning
 Bill Shreck, Director, Office of Communications
 Larry Tibbits, Chief Operations Officer
 Leon Hank, Chief Administrative Officer
 Kim Johnson, Manager, Bureau of Passenger Transportation
 Mike Kapp, Administrator, Economic Development and Enhancement
 Rob Abent, Bureau Director, Aeronautics and Freight Services
 Tim Hoeffner, Administrator, Intermodal Policy
 Bobbi Welke, Southwest Region Engineer

Excused: Maureen Miller Brosnan, Commissioner
 Marneta Young, Commission Executive Assistant

A list of those people who attended the meeting is attached to the official minutes.

Chair Wahby called the meeting to order at 9:00 a.m. in meeting rooms M-120 and M-121 of Lansing Community College-West Campus, in Lansing, Michigan.

I. COMMISSION BUSINESS

Commission Minutes

Chair Wahby entertained a motion for approval of the minutes from the State Transportation Commission meeting of September 25, 2008.

Moved by Commissioner Jung, with support from Commissioner Girard, to approve the minutes of the Commission meeting of September 25, 2008. Motion carried.

II. **DIRECTOR'S REPORT – DIRECTOR KIRK STEUDLE**

Director Steudle's report focused on:

Transportation Funding Task Force Update

The Transportation Funding Task Force (TF2) held their last public meeting on October 27th. The Legislation called for a final report in April 2009 and a draft in October 2008. What they are pushing for right now is to have the final report in the next two weeks. The report will be sent to the Commission, Governor and Legislature. From there a lot a public discussion about funding for transportation will be had.

Director Steudle asked for questions; none were forthcoming.

III. **PRESENTATIONS**

Zilwaukee Bridge Project Update – Tony Kratofil, Bay Region Engineer

The Zilwaukee Bridge was re-opened to traffic a week ago Tuesday. In late February this year, MDOT began work to replace the bearing systems at the expansion joints on the Zilwaukee Bridge, which was essentially “preventive maintenance” work. The new bearing systems were intentionally designed to be thicker than the existing systems so that they would last longer. The original design of the bridge made provisions for deeper bearings, although thinner bearings were installed in the original construction. The contractor on this year's project was Midwest Bridge with an original contract amount of \$3 million; designer was Parsons Transportation Group.

Holes were to be drilled at the back of the concrete “seat” where the bearing rests on the bridge. Then a concrete saw would be inserted to remove the remainder of the concrete and bearing. From the original “as-built” plans of the bridge, the only steel that was expected to be encountered in this area was smaller steel bars used to control cracking while the original concrete cured. When the contractor drilled the initial cores, he unexpectedly encountered and cut through other steel, including portions of several post-tensioning strands, used to provide additional reinforcement at these suspended ends of the concrete segments that make up the bridge.

The extent of the unanticipated damage is as follows: On the one side of the bearing end, (1) out of (12) strands in one of the post-tensioning cables was cut, and (4) out of (12) strands in the second post tensioning cable were cut; on the other side of the bearing end, no post-tensioning strands were cut; on both sides, through the six inch cores, the steel which was cut was larger than the steel we expected to cut. We are not sure why this is – if the steel was moved up from its original location in the design drawings, or if larger steel was simply used in place of the smaller steel that was called for in the original design. We cannot make this determination without causing further damage to the segment end.

When it was evident that the steel reinforcement had been cut, MDOT suspended work. The good work of our construction inspectors and engineers who made the right call to suspend work immediately should be acknowledged. They identified the problem right away, and they took the necessary steps to investigate the problem and protect public safety.

MDOT worked with the consultant designers of the bearing replacement, Parsons, to determine an appropriate fix to reinforce the damaged area. In addition, we hired a second expert consultant, Jannsen and Spaans, to assist us in determining the right fix and to review the retrofit plans of the primary consultant. That retrofit concept was finalized by the primary consultant and was reviewed by the second consultant. The retrofit concept involves constructing an external, post-tensioned, steel bracing system (it looks like a “cradle” or “chin strap” secured around the damaged bearing end, and then is anchored back further on the structure in three locations). The retrofit will compensate for the loss of some of the post tensioning strands and support the bearing end of the concrete segment.

When we became aware that the time it would take to fabricate the retrofit parts, and we realized we would not be open for traffic by Memorial Day, we started a full fledged campaign to alert motorists to plan alternate routes if they can, using US-127 to the west or M-15 to the east, or to plan extra time or stagger their trips if they need to stay on I-75 and use the I-675 detour that is currently in place around the Zilwaukee Bridge.

As part of this campaign, we worked with the City of Saginaw to close several local ramps on I-675 to smooth traffic flow on the primary detour. We talked to local law enforcement and Saginaw officials to implement strategies to move traffic as efficiently as possible on I-675. We placed extra portable message boards at key decision points south of Saginaw. We deployed “spotters” to monitor traffic conditions and report back-up lengths that can be posted on those portable message signs. We worked with the MDOT Intelligent Transportation Systems Center to deploy messages on the large message boards in the metro Detroit area. During Memorial Day weekend, Thursday evening and Saturday, while traffic volumes were heavy at times, there were no significant back-ups reported by the spotters. On that Friday, back-ups began around noon, and stayed steady at about 2 miles long (from the I-675 split to the south by M-46) until 4pm. Between 5 and 6pm backups reached their peak, at about 5 miles long. There was a disabled vehicle on the detour route at this time. After 6pm traffic volumes started to taper off, but a fender bender on I-675 caused the back-ups to increase again on I-75 up to 3 miles for about 2 hours. By 9:30pm or so, all back-ups dissipated.

If traffic volumes remained the same as last year, the user delay model predicted back-ups of 44 miles and delays of over 3 hours. Clearly traffic volumes were down or diverted as a result of the traffic management and communications plan. MDOT staff pulled traffic numbers from permanent traffic recorders on I-75 and US-127. Overall traffic was down by 3% to 13% from the previous year. Traffic was 20% less on I-75, but actually increased 7% on US-127, the suggested primary alternate route. It appears some traffic was diverted away from I-75, perhaps as much as 4,000 to 8,000 vehicles, as a result of the Zilwaukee Bridge closure and our communications plan. For this 20% reduction in traffic demand, the model predicted about a 2 mile back-up and a 15-30 minute maximum delay, which is about what we experienced. So the model worked pretty well in this case. Permanent cross-overs were constructed (can be used in the future) and traffic was shifted several times during the rest of the summer. Northbound traffic was shifted onto the southbound bridge during the peak travel north.

The work associated with this is part of the Extra before the Commission today. The original contract amount is about \$3.3 million, contract items delivered and paid for come to just over \$2 million, leaving a balance of contract not yet completed at about \$1.2 million. The estimated Extra costs to repair the damage involve fabrication and installation of the retrofit assembly, permanent cross-over construction, additional traffic control, cross-over operation, standby equipment, and miscellaneous extras, all totaling just over \$1.4 million. There are some decreases in original contract items. In the end we expect to be within the total contract amount, however we are going to terminate the contract and not get the original contract work completed. The estimated remaining contract balance is \$352,643.65.

Chair Wahby asked who is paying for all this...was there insurance?

Mr. Kratofil responded by saying that right now we are going to pay the bills because the work has been completed. However we are going to conduct an independent and objective review of this. It was important to not jump into a finger pointing stage while we were trying to fix it. We needed the consultants and contractors on board working with us cooperatively. We are going to hire an independent consultant through the Attorney General's office to review the contract documents, all the things that occurred, and to get their recommendation on where the responsibility lies among all the parties. The biggest factor is the clarity of the old "as-built" plans. To our understanding the original contractor is no longer in business but their insurance company may be. We are negotiating the details of that contract and hope to have the contract with the independent consultant awarded by December with 2-3 months to complete the investigation. Based on this we will pursue cost recovery as appropriate.

Eventually we do need to get around to the bearing replacement. We have work scheduled on I-675 which is the major detour for this work over the course of the next 3 years. We won't be out on the Zilwaukee Bridge any sooner than 2012. It is tentatively scheduled for a deck overlay somewhere in that timeframe so we would probably combine the work at the same time.

Chair Wahby commented that we need to make sure we don't have the same problem.

Mr. Kratofil responded that we are going back to the drawing board and certainly take different measures going into this.

Commissioner Scalici, for clarification, asked if we were paying the bill now, then going back after them.

Mr. Kratofil responded yes.

Commissioner Scalici then asked why were paying the bill; everybody has exposure—why not wait until it all settles out and everyone finds out where they stand and then pay the bill. Why would we expose ourselves to paying the bill then ask for the money back.

Mr. Kratofil responded that it's the Commissions' prerogative whether they want to approve the Extras or not. The contractor has worked in good faith on this and should be able to pay their bills and their sub-contractors. If there is a portion of the cost of this that can be assigned to them then we will pursue that afterwards.

Director Steudle added that the other aspect is that all the companies that have been involved are contractors and consultants that do work for us on a routine basis so there is little risk that they will run away. We will certainly have access to go back and recover that money on any other future projects that they happen to be bidding on. We could have said we weren't going to pay for any of it, but in reality, had we started that motion we probably would still have the bridge closed today and we'd be arguing about who's going to pay for it.

Commissioner Atkinson asked, as a practical matter, don't you have to incur the loss before you can recover it.

Director Steudle stated that that was a good point.

Mr. Kratofil added that while the investigation may be complete in a few months, sorting out the negotiations or legal actions may take a long time.

Chair Wahby asked if this has gone through whatever legal sources are available and have they agreed that this doesn't weaken our case or doesn't cause any concerns for recovery. He wants to hear the legal side say whether this is a good practice or a sound practice.

Mr. Isom stated that he would have to get back to the Commission on this because the attorney in his office who normally handles this is not present at the meeting.

Mr. Kratofil added that we have had discussions about how to proceed with the investigation or the independent review.

Chair Wahby reiterated that he wanted to hear it from the Attorney General.

Mr. Isom stated that he has not heard anything during this discussion that gives him concern about weakening our position.

Commissioner Jung commented that it seems to him that if we are going to pay, we ought to at least get an acknowledgement up front (before they accept the payment) from the contractor that it is a disputed amount and that we are going to be seeking recovery.

Mr. Isom stated that in working his office, the attorney's would tell them to put that in the written authorization—that the matter is in dispute. The contractor doesn't admit any responsibility—just that it's a disputed amount.

Chair Wahby commented that he didn't want to get into too much information on this publicly. What we need to do is get answers from the department.

Fiscal Year 2007-2008 Letting Statistics – Myron Frierson

Mr. Frierson gave a brief PowerPoint presentation on the MDOT construction contracting activities during fiscal year 2007-2008.

Bid Lettings:

During FY 2008, MDOT took bids on a total of 830 projects, 422 of which were State Trunkline projects (part of this due to the economic stimulus projects). The remainder of the projects was a combination of Local projects (373), Aeronautics projects (32), and (3) Railroad (Freight Services) projects. The total low bid dollar amount of State trunkline projects let was \$898.3 million, compared to \$1.0 billion for FY 2007, a 10.3% decrease. State trunkline projects represented 50.8% of the total number of projects let and 70.1% of the low bid dollars. The low bid total of other projects let was \$383.4 million. There were 22 lettings held during FY 2008 with 328 different bidders submitting a total of 4,464 bids.

Bid Rejections:

Of the 830 projects let, all bids were rejected on 18 of them, or 2.2%. Eight of the 18 bids rejected projects were State items. There was one low bid rejection during this fiscal year of which the contract bidder submitted an incomplete test bid and neglected to withdraw the bid prior to the bids downloaded.

Design of State Projects:

In the last year a little over 56% was designed by MDOT staff and a little over 43% of the program was designed by a consultant. In contrast, the vast majority of the (number of) projects are done by MDOT staff. We are focused on the less complex projects typically.

Pre-qualified Contractors:

As of the end of FY 2008, there were 739 pre-qualified construction contractors. Of these, 183 contractors worked on projects as prime. In FY 2007, there were 198 prime contractors from the 732 pre-qualified construction contractors. In FY 2008, ten of the prime contractors were awarded 55.9% of the total awarded dollar amount compared with 50.1% in FY 2007.

Projects by Region—Total Dollars:

The bulk of our work was in the Metro Region (more complex projects because the infrastructure is larger; also includes the Gateway Project (\$452.5 million—36%); Grand Region (\$182 million—14%); University Region (\$181.2 million—14%); Bay Region (\$145.2 million—12%); Southwest Region (\$113.9 million—9%); Superior Region (\$94.9 million—8%); and North Region (\$90.8 million—7%).

Projects by Region—Number of Projects:

Metro (159—19.6%); University (129—15.9%); Bay (122—15%); Grand (121—14.9%); Southwest (102—12.6%); North (97—11.9%); and Superior (82—10.1%).

Contractor Payments:

During the 2008 fiscal year, 14,403 payment vouchers were processed totaling \$1.43 million paid to contractors.

Mr. Frierson asked for questions; none were forthcoming.

IV. OVERSIGHT

Commission Agreements (Exhibit A) – Myron Frierson

Mr. Frierson presented information on 23 agreements. Pending any questions, Mr. Frierson asked for approval of Exhibit A; none were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Atkinson and supported by Commissioner Girard to approve Exhibit A. Motion carried on a unanimous voice vote.

Bid Letting Pre-Approvals (Exhibit A-1) – Myron Frierson

Mr. Frierson gave a brief recap of the October 3rd letting: 19 State projects with a total engineer's estimates of \$40.4 million were let. The low bids received on these projects totaled \$41.6 million. The average low bid for the 19 State projects was \$2.2 million. The average number of bids received for the 29 projects let equal 6.3, and the average number of bids received for State projects let equal 5.3.

As of September 15, 2008, it was estimated that 275 State projects with construction cost estimate totaling \$592.6 million would be let during the 2009 fiscal year. In addition to the State projects let in October, 1 Local program area project included work in the Jobs Today Program.

For the November 7, 2008 letting, 23 State projects with engineer estimates totaling \$91.7 million are scheduled to be let. Of the 23 State projects, 16 have warranties. The 19 Local projects scheduled to let November 7, have a total engineer's estimates of \$21.3 million. There are no Local projects for this letting included in the Jobs Today program.

Pending any questions, Mr. Frierson asked for approval of Exhibit A-1.

Commissioner Atkinson asked, regarding Item #6 (1.19 miles of hot mix asphalt profile cold milling...in the city of Corunna, Shiawassee County) and Item #17 (Emergency bridge rehabilitation...in the cities of Roseville, St. Claire Shores and Detroit, Wayne and Macomb Counties), if we are right if we conclude that there are no warranties associated with these 2 projects.

Mr. Frierson responded that typically when there is no information in the write-up regarding warranties, there are none associated with it.

Commissioner Atkinson asked if there were any particular characteristic of these 2 projects that we should conclude that warranties aren't necessary—especially Item #6 which is a big job.

Mr. Frierson responded that he would get information back to her regarding this.

Director Steudle added that in general if a project falls within certain parameters it automatically gets a warranty. It is suspected that there was some parameter that kicked it out of the necessity of needing a warranty.

No other questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Jung and supported by Commissioner Atkinson to approve the November bid letting. Motion carried on a unanimous voice vote.

Letting Exceptions Agenda (Exhibit A-2) – John Polasek

Mr. Polasek provided information on 3 State projects that were over the engineers' estimate and are accompanied by justification memos. Pending any questions, Mr. Polasek asked for approval of Exhibit A-2.

Commissioner Atkinson asked, regarding Item #1 (Michigan Intelligent Transportation System tower replacement on I-696...Oakland and Macomb Counties) what associated items were there with the shelter for \$277,000.

Mr. Polasek responded that he was not familiar with the ITS type of projects but he would get the information back to her.

Commissioner Atkinson stated that the communications tower and foundation appear to be the main element and assumes that because it says ITS, it involves a lot of expensive material within it.

Mr. Polasek pointed out that the write-up indicates a lack of bid history so that would be part of the concern.

No other questions were forthcoming.

Chair Wahby entertained a motion. Motion was made by Commissioner Jung and supported by Commissioner Scalici to approve Exhibit A-2. Motion carried on a unanimous voice vote.

Contract Adjustments (Exhibit B) – John Friend

Mr. Friend introduced Ben Gowell, who is on the engineering training cycle for MDOT.

We are going to close out this year within about 2% on our performance matrix. We continue to manage the program within the 5% that the Commission has established. If the Commissioners are interested, we will break this down by region and provide individual region reports.

Special mention was made of MDOT Extra Item #2008-164 (2.61 miles of freeway reconstruction and widening...in the cities of Kalamazoo and Portage, Kalamazoo County). Bobbi Welke, Southwest Region Engineer, stated that while we are up to \$75.7 million worth of payments to the contractors, there is a substantial amount of negative balancing that will come to the Commission throughout the winter months and into next year (the project continues through spring of 2009 with the restoration items). There are 2 sound wall issues: 1 in which we are in negotiations with the designer to raise the height of the wall (it is not to the correct height) but it is not expected for the cost to be an obligation to MDOT (we are using the consultants design error and omission process to seek recovery; the 2nd is where the neighborhood behind the sound wall is very concerned with the sound. We are in communication with FHWA and their sound wall experts from their D.C. office to determine what actions are necessary—on the surface it appears everything from a design and construction point of view was appropriately done, however the property owners are still claiming that their quality of life is affected.

This item is a request to pay the contractor 2 separate payments for his share of the value engineering cost proposal. Previously, the Commission reviewed information where MDOT changed the bridge foundation from a very typical type of foundation to something unique that the contractor proposed. We calculate the savings—half go to the contractor and half stay with MDOT for other projects. Overall there are large dollar amounts for the series of contract modifications, but for the most part they are offset with other balancing or negative type items. In terms of this value engineering cost proposal overall we will be saving \$3.7 million, of which the contractor receives \$1.85 million. Specifically, we are asking for approval of all the balancing extras as well as the decreases, and in particular the 2 payments.

Ms. Welke made a correction to the verbiage on page 5 of the write-up in the first full paragraph below the table. Instead of “These current contract modifications 35, 39 and 41 now balance the remaining VECP items”, it is more appropriate to say “...35, 39 and 41 are now beginning to balance the remaining VECP items”. We still need to bring all the final items which we suspect are negative amounts.

Because this Extra has met its allowable threshold, it will have to come to the Commission again. We will have an item on this project at next months’ meeting as well.

Ms. Welke asked for questions; none were forthcoming.

Mr. Friend presented information on a total of 8 Extra MDOT, 7 Extra Local, and 1 Overrun Local projects. This includes Extra Item #2008-145 (Zilwaukee Bridge project presented earlier) for conditional approval subject to final sign-off by the Attorney General. Pending any questions, Mr. Friend asked for approval of Exhibit B.

Chair Wahby stated that he would like for the Commission to receive something from the Attorney General’s office saying that Extra Item #2008-145 has been reviewed and approved by them. He asked the other Commissioners to comment.

Commissioner Scalici commented that he would like to see it tabled until next month and they have the review and approval from the Attorney General. He doesn't want to see it get paid and then have a hard time pulling it back.

Director Steudle stated that we could do that. In either case, the important thing is the review by the Attorney General's office and whether that happens. The motion that was proposed was that we wouldn't authorize it until that is in place.

Chair Wahby commented that if it is approved by the Attorney General's office then it will get paid; if they don't approve it then it won't get paid.

Commissioner Atkinson asked, for clarification, if we were to approve Exhibit B, would Extra Item #2008-145 be included or not, or does it depend on the motion.

Chair Wahby and Director Steudle agreed that it depends on the motion.

Commissioner Atkinson made the motion to approve Exhibit B except as to Extra Item #2008-145, which is the conditional approval dependent upon approval by the Attorney General's office. Motion supported by Commissioner Scalici. Motion carried on a unanimous voice vote.

V. **APPOINTMENTS**

Asset Management Council Appointments/Re-Appointments – Frank E. Kelley

Mr. Kelley asked the Commission to approve the re-appointments of Mr. William McEntee (1/1/09 to 12/31/11), Mr. Spencer Nebel (1/1/09 to 12/31/11), Mr. Carmine Palombo (1/1/09 to 12/31/11), and Mr. Gerald Richards (1/1/09 to 12/31/11) to the Asset Management Council.

Chairman Wahby entertained a motion for approval. Motion was made by Commissioner Scalici and supported by Commissioner Atkinson to approve the re-appointments of William McEntee, Spencer Nebel, Carmine Palombo and Gerald Richards. The motion carried on a unanimous voice vote.

VI. **SCHEDULE**

2009 State Transportation Commission Meeting Schedule – Frank E. Kelley

Mr. Kelley stated that these dates have been set for 2009, and if no objections, asked for approval. It should be noted that the January 2009 date is a **Friday** due to a conflict with a major meeting scheduled by the department on the 29th, and the November 2009 date is again the week **before** the Thanksgiving holiday.

Chairman Wahby entertained a motion for approval. It was moved by Commissioner Girard, with support from Commissioner Scalici to approve the 2009 meeting schedule as submitted. The motion carried on a unanimous voice vote.

VII. **PUBLIC COMMENTS**

Chair Wahby asked if any member of the audience wanted to address the Commission; none were forthcoming.

Chair Wahby asked if any Commissioner wanted to address the Commission.

Commissioner Atkinson thanked the department for the warranty information provided to them—it was very helpful to her for her understanding of the issue.

Leon Hank, Chief Administrative Officer, introduced Theodore G. Burch, Assistant Division Director of FHWA, Michigan Division.

ADJOURNMENT

There being no further business to come before the Commission, Chair Wahby declared the meeting adjourned at 10:00 a.m.

The next full meeting of the Michigan State Transportation Commission will be held on November 20, 2008, in the MDOT Bureau of Aeronautics Auditorium in Lansing, Michigan, commencing at the hour of 9:00 a.m.

Frank E. Kelley
Commission Advisor